

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS**

GREAT BOWERY INC., d/b/a TRUNK
ARCHIVE

Plaintiffs,

v.

CHIVE MEDIA GROUP, LLC.

Defendants.

Case No. 1:22-cv-1333

COMPLAINT

**TRUNK ARCHIVE’S COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiff Great Bowery Inc., d/b/a Trunk Archive for their Complaint against Chive Media Group, LLC., alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101 *et seq.*
2. This Court has subject matter jurisdiction over Plaintiff’s claims for copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).
3. This court has personal jurisdiction over Defendant because Defendant’s acts of infringement complained of herein occurred in the state of Texas, Defendant’s acts of infringement were directed towards the state of Texas, Defendant caused injury to Plaintiff within the state of Texas, and Defendant has a physical presence in the state of Texas.

4. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

PARTIES

5. Plaintiff Great Bowery Inc. d/b/a Trunk Archive is a Delaware corporation duly organized by law, with a principal place of business in New York.

6. Defendant Chive Media Group, LLC. (“Chive”) is a Texas limited liability company with a business address of 98 San Jacinto Blvd, Austin TX 78701.

FACTUAL ALLEGATIONS

7. Trunk Archive is a full service photography licensing agency representing some of the most prominent photographers and iconic images in the world.

8. Trunk Archive’s catalogue features imagery from hundreds of prominent artists and designers that are available for license.

9. Some of Trunk Archive’s most prominent photographers are collaborators Inez van Lamsweerde and Vinoodh Matadin, who are professionally known and credited as Inez and Vinoodh (“Inez and Vinoodh”).

10. Inez and Vinoodh are highly acclaimed professional photographers, specializing in beauty and fashion photography. Inez and Vinoodh are most well-known for their high fashion photography, featuring world famous artists, musicians, and actors.

11. Inez and Vinoodh’s portfolio includes international clients and their work has been featured in top publications such as *Vogue*, *Harper’s Bazaar*, *Vanity Fair*, *V Magazine*, *Porter*, *W Magazine*, and many more. Additionally, they have shot work for high end fashion brands such as Dior, Balenciaga, Chanel, Louis Vuitton, Moschino, Saint Laurent, and countless others. They have also

photographed portraits of President Barack Obama and various actors, including Jennifer Lawrence, Michael Douglas, Natalie Portman, Daniel Day Lewis, and Tom Cruise.

12. Inez and Vinoodh are the co-authors of an original portrait of actor Bill Murray (“Murray Photograph”).

13. Attached hereto as Exhibit A is a true and correct copy of the Murray Photograph.

14. Inez and Vinoodh registered the Murray Photograph with the United States Copyright Office under registration VA 2-232-075.

15. Inez and Vinoodh subsequently granted Trunk Archive the exclusive right to license the Murray Photograph.

16. Defendant Chive Media Group is a lifestyle brand operating in the digital media and e-commerce field and reaches millions of customers each month. See www.chivemediagroup.com.

17. Chive is the owner and operator of the website www.thechivery.com (“Website”).

18. Chive advertises and sells entertainment themed t-shirts, accessories, art, and rare coins on its Website.

19. On or about May 5, 2020 Plaintiff discovered that Defendant was selling t-shirts with the Murray Photograph emblazoned on them.

20. Chive used the Murray Photograph on at least 51 separate t-shirt designs which were advertised and sold on its Website (“T-Shirts”).

21. Attached hereto as Exhibit B are true and correct copies of the 51 T-Shirts as found on the Website.

22. Chive used the Murray Photograph on a face-mask which was advertised and sold on its Website (“Mask”).

23. Attached hereto as Exhibit C is a true and correct copy of the Mask.

24. On or about June 1, 2020, Trunk Archive, through counsel, contacted Chive demanding that Chive immediately cease and desist use of the Murray Photograph and make reasonable compensation to Trunk Archive for Chive's past and ongoing violations of the copyright. The parties were unable to resolve the matter.

25. Upon information and belief, Chive continued to advertise, manufacture, and sell the T-Shirts and Mask (collectively, "Infringing Products") despite being notified that use of the Murray Photograph violated Inez and Vinoodh's copyright.

26. In no event did Trunk Archive offer Chive a license to use the Murray Photograph in any manner.

27. Trunk Archive is informed and believes that Chive created, distributed, and sold unauthorized copies of the Murray Photograph by designing, manufacturing and selling the Infringing Products on its Website.

CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 U.S.C. § 101 *et seq*

28. Plaintiff incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

29. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of the unique and original Murray Photograph.

30. Plaintiff is informed and believes and thereon alleges that the Defendant willfully infringed upon the copyrighted Murray Photograph in violation of Title 17 of the U.S. Code, in that it used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Murray Photograph without Plaintiff's consent or authority, by creating the Infringing Products.

31. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b), or, where available, statutory damages in an amount up to \$150,000.00 pursuant to 17 U.S.C. § 504(c).

32. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendants.

33. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of her copyright pursuant to 17 U.S.C. § 502.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment against Defendant as follows:

- For a finding that Defendant infringed Plaintiff's copyright interest in the Murray Photograph by copying, displaying, distributing, and selling the Infringing Products without a license or consent;
- For an award of actual damages and disgorgement of all of profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election and where available, an award for statutory damages against Defendant in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- For an injunction preventing Defendant from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502;
- For pre judgment interest as permitted by law; and
- For any other relief the Court deems just and proper.

Dated: December 19, 2022

Respectfully submitted,

s/ Mathew K. Higbee

Mathew K. Higbee, Esq.

Bar No. 24076924

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Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiff Trunk Archive demands a trial by jury in the above matter.

Dated: December 19, 2022

Respectfully submitted,

s/ Mathew K. Higbee

Mathew K. Higbee, Esq.

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